

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

In re:

THE NEWPORT CREAMERY, INC.
Debtor

BK-01-13196
CHAPTER 7

ANDREW S. RICHARDSON, Trustee of
THE NEWPORT CREAMERY, INC.
Plaintiff

vs.

AP No. 02-

GE CAPITAL FRANCHISE FINANCE CORPORATION,
Successor to FFCA ACQUISITION CORPORATION,
PETER RECTOR,
PETER RECTOR and ELIZABETH MYERS
Trustees of The Mason Rector Family Trust
Defendants

AP 021027

FILED 10-02-10-04-08-00

COMPLAINT

1. This is an action brought by the Trustee of Newport Creamery, Inc. (hereinafter "Creamery" or "debtor") pursuant to the Trustee's authority under 11 U. S. C. §544 against certain participants in the leveraged buyout (hereinafter "LBO") of the Creamery in March of 1999. The Trustee seeks to void the security interests of the LBO lender in property of the Creamery and property fraudulently conveyed as part of the leveraged buyout transaction. The Trustee also seeks to recover monies paid to director/shareholders who negotiated, consummated, and individually benefited from the LBO.

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§157(b)(1) and 28 U. S. C. §1334. This is a core proceeding pursuant to 28 U. S. C. §157 (b).

3. The venue is proper in this district pursuant to 28 U.S.C. §1409.

4. Andrew S. Richardson is the duly qualified Chapter 7 Trustee of the debtor, The Newport Creamery, Inc.

5. Defendant GE Capital Franchise Finance Corporation, successor to FFCA Acquisition Corporation (hereinafter "FFCA"), is a Delaware corporation registered to do business in the State of Rhode Island. FFCA is engaged in the business of the financing of real estate primarily for fast food franchised restaurants. FFCA's offices are located in Scottsdale, Arizona.

6. Defendants Peter Rector, and Peter Rector and Elizabeth Myers, Trustees of The Mason Rector Family Trust (hereinafter "Rector Trust") were shareholders of the Creamery prior to the LBO (hereinafter collectively "shareholders"). Collectively, these shareholders held 78% of the outstanding shares of the Creamery. On information and belief, defendant Rector and members of his immediate family are beneficiaries of the Rector Trust.

7. Peter Rector, Robert Radway, Peter Damon, and Elizabeth Myers were at all relevant times complained of herein members of the Board of Directors of the Creamery (hereinafter "former directors").

8. At all relevant times prior to March 12, 1999 Peter Rector was Chair of the Board and President, Treasurer, Chief Executive Officer and Chief Financial Officer of the Creamery. He was responsible for overseeing all aspects of the operations and finances of the Creamery.

9. Newport Creamery, L. P. (hereinafter "L. P.") is a Delaware limited partnership. Its general partner is Newport Creamery South, Inc., a Delaware corporation whose president is Robert Swain. Shareholders of Newport Creamery South, Inc. and the limited partners of Newport Creamery, L. P. are Robert Swain and his wife Linda Swain. Robert Swain controlled Newport Creamery, L. P.

10. Rocomi Enterprises, LLC (hereinafter "Rocomi") is a Florida limited liability company. Robert Swain and Linda Swain are the members of Rocomi. As a result of the LBO in March of 1999, Rocomi became the owner of 100% of the shares of the Creamery.

11. Robert Swain, is, on information and belief, domiciled in the State of Florida with residences in Clearwater, Florida and Boston, Massachusetts. Subsequent to the LBO on or about March 12, 1999 Robert Swain became the sole director and President of the Creamery.

12. The Creamery was originally incorporated in the State of Rhode Island on January 8, 1934 and subsequently was authorized to do business in the Commonwealth of Massachusetts on November 24, 1980 and in the State of Connecticut on April 2, 1990.

13. The Creamery engaged in the business of the manufacture and sale of ice cream, frozen desserts, and other food products.

14. In March of 1999, The Creamery operated over 30 restaurants in Rhode Island, Massachusetts and Connecticut and employed over 2,000 people on a full or part time basis;

15. The Creamery had lost money in its operations in each of the five years preceding the LBO in March of 1999.

16. On or about January 7, 1999, Swain entered into a stock purchase agreement with the shareholders of the Creamery to purchase all of the outstanding shares of the Creamery for the sum of \$7,625,000.00. The agreement was executed by defendant Rector and the other shareholders and had been approved by the directors at a meeting in December, 1998. Defendants Rector and Rector and Myers participated in the Directors' meeting and voted to enter into the share purchase agreement.

17. The LBO ultimately concluded in mid-March of 1999 and did not follow the form of sale as set out in the stock purchase agreement.

18. Immediately prior to the buyout the Creamery had title to real estate, restaurant facilities and related equipment in Middletown, Smith Street, Providence, Coventry, Greenville and Warwick, Rhode Island and Seekonk, Massachusetts. In addition it owned the real estate, ice cream plant and corporate offices adjacent to the Middletown restaurant. At that time the real and personal property was owned by the Creamery free and clear of any mortgages or security interests.

19. Immediately prior to the LBO the Creamery had no significant secured debt.

20. Immediately prior to the LBO the Creamery had approximately \$1.6 million dollars in unsecured debt.

21. At a telephonic meeting of the directors of the Creamery occurring on or about March 10, 1999 the directors voted to redeem all existing common stock of the corporation for the sum of \$7,310.64 per share for a total redemption payment of \$7,625,000.00.

22. At the same meeting the directors voted to sell the real estate described in paragraph 18 above to Newport Creamery, L. P. for the total sum of \$4,700,000. in order to obtain funds necessary to accomplish the redemption of shares.

23. Defendants Rector and the Rector Trustees participated in this meeting and voted on the questions presented.

24. As part of the LBO, the Creamery transferred the real estate to L. P. at a purchase price of \$4,650,000.00. One hundred per cent of the purchase price was obtained from loans with defendant FFCA secured by separate mortgages on each of the six properties and assignments of rents and leases.

25. As part of the LBO, FFCA loaned L. P. \$250,000.00 in three loans (\$100,000.00, \$75,000.00, and \$75,000.00) and took security interests in the restaurant equipment located in the Coventry, Middletown, and Smith Street, Providence locations.

26. As part of the LBO, the Creamery pledged to FFCA first priority security interests in all the equipment located at fourteen specific Creamery restaurants leased from unrelated entities in order to secure a \$1.45 million dollar loan to further fund the LBO.

27. At the time of closing, Rocomi did not have sufficient cash to fund the LBO and defendant Rector and Swain agreed that the Creamery would give Rector a promissory note in the amount of \$225,000.00 bearing interest at a rate of 14% per annum payable on or before January 3, 2000 (hereinafter the "Rector loan") in order to meet the full agreed upon redemption price.

28. In order to fund the LBO the Creamery transferred and assigned to defendant Rector the right to receive the cash surrender value in certain life insurance policies owned by the debtor with a value of \$938,168.95.

29. As part of the LBO, one hundred percent of the outstanding stock of the Creamery was redeemed for a total payment of \$7,625,000.00 or \$7,310.64 per share to the existing shareholders. Defendant Rector received \$2,492,840.61 and the Rector Trust received \$3,487,136.01.

30. As part of the LBO, the Creamery also entered into consulting agreements with defendant Rector obligating the debtor to pay to him \$250,000.00 in fees for services plus fringe benefits and expenses through December 31, 2000. Rector remained an officer and employee of the Creamery through December 31, 2000.

31. All proceeds of the FFCA loans, the cash surrender value of the life insurance and the Rector loan were paid over by the Creamery to the shareholders in order to redeem their stock. None of the proceeds of the LBO were retained by the Creamery for use in its continued operations.

32. As part of the LBO, new stock was issued to Rocomi Enterprises LLC, and it became the sole shareholder of the Creamery. Swain became the sole director and President.

33. The transfer of the real estate to L. P. and the indebtedness incurred by it and by the Creamery to fund the LBO resulted in FFCA having a security interest in substantially all of the operating assets formerly owned by the Creamery and a claim to the rental obligations of the Creamery to L. P.

34. The new debt to FFCA and Rector and the rental obligations of the Creamery to L. P. to service and secure the L. P. debt to FFCA were substantial financial liabilities of the Creamery that did not exist prior to the leveraged buyout.

35. The Creamery did not receive any economic benefit from the LBO and did not receive reasonably equivalent value (a) for the transfer of real estate and personal property and cash to defendant L. P.; (b) for the transfer of mortgages, security interests, assignments of leases and cash to defendant FFCA; or (c) for the transfer of funds to defendants Rector and Rector Trust shareholders.

36. The defendant FFCA was fully informed with respect to all aspects of the 1999 leveraged buyout and knew or reasonably should have known that all of its loan proceeds were to be paid over to the redeeming shareholders and not retained by the Creamery for its future operations.

37. FFCA also knew, or reasonably should have known, of the Creamery's operating losses in the five years preceding the LBO and by taking on the additional obligations necessary to fund the leveraged buyout without receiving corresponding value, the Creamery would be rendered insolvent or left with insufficient capital to carry on its business.

38. The defendant shareholders, Rector and the Rector Trustees were fully informed with respect to all aspects of the 1999 leveraged buyout and knew or reasonably should have known that the transfer of assets to L. P. and the Creamery's assumption of the debt and lease obligations necessary to fund the LBO and the transfer of all the proceeds to the redeeming shareholders left the Creamery either insolvent or with insufficient capital necessary to carry on its business.

39. Pursuant to 11 U.S.C. §544(b) and 11 U. S. C. §550, the plaintiff trustee has the right to avoid any transfer of an interest in the debtor's property and any obligations incurred by the debtor that are avoidable under applicable non-bankruptcy law including the Rhode Island Uniform Fraudulent Conveyance Act, R.I.G.L. §6-16-1 et seq.

COUNT I/CLAIMS AGAINST FFCA

The Plaintiff incorporates by reference and restates the allegations set forth in paragraphs 1 through 39 above.

40. Defendant FFCA directed, controlled and approved all aspects of the Creamery LBO.

41. FFCA conditioned its mortgage and equipment loans upon the creation of leases between L. P. and the Creamery that obligated the Creamery to pay a premium in rent over and above L. P.'s debt service expenses and obligated the Creamery to assume all costs of operating

the six properties it no longer owned. The leases obligated the Creamery to pay rent for the use of L. P.'s properties in excess of fair market rents.

42. FFCA conditioned its loans on the creation of L. P. as a special purpose vehicle and as a "bankruptcy remote entity" to separate the real estate and hard assets that secured these loans from the Creamery while continuing to control the cash flow of the Creamery through the assignment of the leases.

43. FFCA was aware that all of the proceeds of its loans to the Creamery and to L. P. would not benefit the Creamery but were to be used to fund the LBO and were to be paid to the redeeming shareholders.

44. In making the loans to L. P. and the Creamery, FFCA was aware that L. P.'s sole source of revenue to service the loans was from rentals paid pursuant to the Creamery leases.

45. In making the loans and in taking security, FFCA was aware that the Creamery had lost money in the five years of operations prior to the LBO and as a result of the LBO the Creamery was taking on substantial additional debt and lease obligations.

46. In making the loans and in taking its security, FFCA was aware that Swain and Rocomi had been unable to arrange for the availability of enough money to close the transaction and that as part of the closing the Creamery had executed the Rector note.

47. FFCA financed the LBO knowing that Swain and therefore Rocomi was making only a token equity contribution of \$248,000.00 and that even these funds were to be paid to the redeeming shareholders and were not to be available for ongoing Creamery operations.

48. As part of the leveraged buyout, the Creamery transferred to FFCA or caused to be transferred through L. P. property of the Creamery in the form of mortgages on the real estate,

the security interests in Creamery equipment, the assignments of rents and leases and Creamery cash.

49. The debtor and the debtor through L. P. made the transfer of these property interests to FFCA and FFCA received this property with the actual intent to hinder, delay, or defraud then existing and future creditors of the Creamery in their efforts to collect obligations owing to them.

50. The above described transfers of property interests of the Creamery to FFCA and the obligations incurred by the debtor to FFCA pursuant to the secured notes and leases are fraudulent transfers as defined in R.I.G.L. §6-16-4 (a) (1) and may be avoided by the Trustee pursuant to 11 U. S. C. §544 and 11 U. S. C. §550.

WHEREFORE, for the above reasons, the Trustee asks that the Court grant the following relief:

A. Declare null, void, and of no effect and rescind (a) the security interest granted by the debtor to FFCA in the equipment in fourteen stores; (b) the mortgages and security interests granted by the debtor through L. P. to FFCA in the real estate located in Middletown, Coventry, Smith Street, Providence, Greenville, Rhode Island and Seekonk, Massachusetts; and (c) the security interests granted by the debtor through L. P. to FFCA in the equipment and personal property located in the Middletown, Coventry and Smith Street stores; and (d) the assignment of rents and leases taken by FFCA as further security for its loans;

B. Declare null, void, and of no effect any obligation incurred by the Creamery to FFCA pursuant the loans made to the Creamery or pursuant to the assignments of rents and leases;

C. Order the defendant FFCA to return to the debtor all payments made by the debtor to FFCA directly or indirectly through L. P. on obligations avoided as set out in paragraphs A and B above;

D. Enter preliminary and permanent injunctions enjoining the defendant FFCA, its agents, employees, officers, attorneys or persons acting in concert with them from taking any action to enforce, collect, or receive any benefit from its security interests, mortgages, assignment of rents and leases or obligations obtained directly from the Creamery from the debtor through Newport Creamery, L. P.;

E. Award the Trustee his costs of prosecuting this action; and

F. Enter any and all further relief the Court deems just and proper.

COUNT II/AGAINST FFCA

The plaintiff repeats, realleges and incorporates herein the allegations set forth in paragraphs 1 through 50 above.

51. As part of the LBO, the Creamery transferred to FFCA or caused to be transferred through L. P., property of the Creamery in the form of the mortgages on the real estate, the security interests in Creamery equipment, the assignments of rents and leases and Creamery cash.

52. The debtor failed to receive reasonably equivalent value from FFCA for the property interests transferred to FFCA and obligations incurred as described above as all of the proceeds of the loans were transferred to the shareholders and not retained by the debtor.

53. As a result of the above described transfers and the failure of the debtor to receive reasonably equivalent value in exchange for the transfers, the Creamery was rendered insolvent

or the Creamery's remaining assets were unreasonably small in relation to its ongoing business activities.

54. At the time of the above described transfers to FFCA, it was reasonably foreseeable that the Creamery, in its continued business, intended to incur or would incur debts beyond its ability to pay as they became due.

55. The above described transfers of property and property interests to FFCA and the obligations incurred by the Creamery to FFCA were fraudulent transfers as defined in the Rhode Island Uniform Fraudulent Transfer Act, R.I.G.L. §6-16-4 (a) (2) and may be cancelled, voided, set aside and rescinded by the Trustee pursuant to R.I.G.L. §6-16-7 and 11 U. S. C. §544 and 11 U. S. C. §550.

WHEREFORE, for the above reasons, the Trustee on behalf of creditors and the estate asks that the Court grant the following relief:

A. Declare null, void, and of no effect and rescind (a) the security interest granted by the debtor to FFCA in the equipment in fourteen stores; (b) the mortgages and security interests granted by the debtor through L. P. to FFCA in the real estate located in Middletown, Coventry, Smith Street, Providence, Greenville and Seekonk, Massachusetts; and (c) the security interests granted by the debtor through L. P. to FFCA in equipment and personal property located in the Middletown, Coventry and Smith Street stores; and (d) the assignment of rents and leases taken by FFCA as further security for its loans.

B. Declare null, void, of no effect any obligation incurred by the Creamery to FFCA pursuant the loans made to the Creamery or pursuant to the assignment of rents and leases.

C. Order the defendant FFCA to return to the debtor all payments made by the debtor to FFCA directly or through L. P. on obligations avoided as set out in paragraphs A and B above;

D. Enter a preliminary and permanent injunctions enjoining the defendant FFCA, its agents, employees, officers, attorneys or persons acting in concert with them from taking any action to enforce, collect, or receive any benefit from its security interests, mortgages, assignment of rents and leases or obligations obtained from the Creamery or from the debtor through Newport Creamery, L. P.;

E. Award the Trustee his costs for the prosecution of this action; and

F. Enter any and all further relief the Court deems just and proper.

COUNT III/AGAINST FFCA

The Plaintiff incorporates by reference and restates the allegations set forth in paragraphs 1 through 55 above.

56. The Trustee represents the interests of at least one creditor whose claim arose before the transfers to FFCA.

57. The Creamery's above described transfers of property and property interests to FFCA were made and the obligations were incurred without the Creamery receiving reasonably equivalent value in exchange for the transfer or obligation.

58. The Creamery was insolvent or became insolvent as a result of the transfers to FFCA and obligations incurred to FFCA.

59. The transfers of property and property interests to FFCA and the obligations incurred by the Creamery to FFCA under the circumstances described above were fraudulent transfers as to then existing creditors as defined in the Rhode Island Uniform Fraudulent Transfer Act, R.I.G.L. §6-16-5 and may be cancelled, voided, and set aside and rescinded by the Trustee pursuant to R.I.G.L. §6-16-7 and 11 U. S. C. §§544 and 550.

WHEREFORE, for the above reasons, the Trustee on behalf of creditors and the estate asks that the Court grant the following relief:

A. Declare null, void, and of no effect and rescind (a) the security interest granted by the debtor to FFCA in the equipment in fourteen stores; (b) the mortgages and security interests granted by the debtor through L. P. to FFCA in the real estate located in Middletown, Coventry, Smith Street, Providence, Greenville and Seekonk, Massachusetts; and (c) the security interests granted by the debtor through L. P. to FFCA in equipment and personal property located in the Middletown, Coventry and Smith Street stores; and (d) the assignment of rents and leases taken by FFCA as further security for its loans;

B. Declare null, void, and of no effect any obligation incurred by the Creamery to FFCA pursuant the loans made to the Creamery or pursuant to the assignment of rents and leases;

C. Order the defendant FFCA to return to the debtor all payments made by the debtor to FFCA directly or indirectly through L. P. on obligations avoided as set out in paragraphs A and B above;

D. Enter a preliminary and permanent injunctions enjoining the defendant FFCA, its agents, employees, officers, attorneys or persons acting in concert with them from taking any action to enforce, collect, or receive any benefit from its security interests, mortgages, assignment of rents and leases or obligations obtained from the Creamery or indirectly from the debtor through Newport Creamery, L. P.;

E. Award the Trustee his costs for the prosecution of this action; and

F. Enter any and all further relief the Court deems just and proper.

COUNT IV/AGAINST FFCA

The Plaintiff incorporates by reference and restates the allegations set forth in paragraphs 1 through 59 above.

60. Defendant FFCA directed, arranged, provided financing and performed other services to structure and facilitate the 1999 LBO.

61. These services were performed for the benefit of the Creamery shareholders and for the benefit of Rocomi/Swain and not for the benefit of the Creamery

62. By performing these services for the benefit of persons and entities other than the debtor, FFCA was paid in excess of \$130,000.00 in fees and expenses by the Creamery as part of the LBO.

63. The Creamery did not receive reasonably equivalent value in return for the payment of fees and costs to FFCA.

64. The Creamery made these payments to FFCA as part of the LBO which rendered the Creamery insolvent or left it with insufficient assets to regularly conduct its business.

65. The Creamery made these payments at a time when it intended to incur, or believed, or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

66. The payment of fees to FFCA without receiving a benefit was a fraudulent transfer as defined in R.I.G.L. §6-16-4 (a) (2) and may be cancelled, voided, set aside and rescinded by the Trustee pursuant to R.I.G.L. §6-16-7 and 11 U. S. C. §544.

WHEREFORE, for the above reasons the Trustee asks that the Court grant the following relief:

A. Declare null, void and of no effect the collection of fees by FFCA from the Creamery in connection with the LBO transaction of March, 1999 and order FFCA to repay to the Trustee all fees collected from the Creamery;

B. Grant the Trustee his costs for the prosecution of this action; and

D. Grant any and all further relief the Court deems just and proper.

COUNT V/CLAIMS AGAINST DIRECTOR

The Plaintiff incorporates by reference and restates the allegations set forth in paragraphs 1 through 39 above;

67. Defendant Rector was a director of the Creamery during the negotiation and implementation of the 1999 LBO.

68. As a director, Rector had a fiduciary duty to exercise his best business judgment for the benefit of the Creamery.

69. Defendant Rector personally and through the Rector Trust held 78% of the shares of the Creamery and was the primary beneficiary of the LBO.

70. Rector's actions in authorizing and implementing the LBO and the redemption of shares breached his fiduciary duty to the corporation by approving a transaction which provided no benefit to the corporation but provided millions of dollars to himself.

71. The above described actions of defendant Rector damaged the Creamery by causing it to have insufficient assets to carry on its business and pay creditors in the ordinary course.

72. Defendant Rector knew or reasonably should have known that his actions were in breach of his fiduciary duties and would result in harm to the Creamery.

WHEREFORE, for the above reasons the Trustee asks that the Court grant the following relief against defendant Rector in his capacity as director of The Newport Creamery, Inc.:

A. Declare that this director's actions in authorizing and implementing the March, 1999 LBO and authorizing the redemption of shares was in violation of his fiduciary duty to the Creamery;

B. Declare null, void and unenforceable the decision of the Board of Directors authorizing the redemption of shares and the payment of \$7,625,000. to then existing shareholders;

C. Order defendant Rector to restore to the Creamery \$7,625,000. distributed to shareholders in violation of his fiduciary duty to the corporation;

D. Award the Trustee his costs for the prosecution of this action; and

E. Award any and all further relief the Court deems just and proper.

COUNT VI/CLAIMS AGAINST DIRECTOR

The Plaintiff repeats, realleges and incorporates by reference the allegations set forth in paragraphs 1 through 39 and 67 through 72 above;

73. The LBO rendered the Creamery insolvent or left it with insufficient assets to carry on its business.

74. The directors of a corporation have a fiduciary duty to exercise their best business judgment for the benefit of the creditors of the corporation when it is insolvent or when proposed action will cause the company to become insolvent.

75. Defendant Rector breached the fiduciary duty owed to existing and future creditors of the Creamery in authorizing the distribution of assets of the Creamery to its shareholders in a transaction which caused it to become insolvent or left it with insufficient assets to carry on its business and pay its creditors in the ordinary course of business and thus impaired the capital of the corporation.

76. Defendant Rector as a director of the The Newport Creamery, Inc. was subject to the duties imposed upon directors by the Rhode Island Business Corporation Act., R.I.G.L. §7-1.1-1 et seq.

77. Pursuant to R.I.G.L. §7-1.1-43 defendant Rector is liable to the Trustee in an amount equal to the excess by which the funds paid to the shareholders caused the assets of the corporation to be less than its liabilities or caused the company to have insufficient assets to carry on its business and to pay its creditors in the ordinary course.

WHEREFORE, for the above reasons the Trustee asks that the Court grant the following relief against defendant Rector in his capacity as director of The Newport Creamery, Inc.:

A. Declare that this director's action in authorizing and implementing the March, 1999 LBO and authorizing redemption of shares was in violation of his fiduciary duty to existing and future creditors of the Creamery;

B. Declare null, void and unenforceable the decision of the Board of Directors authorizing the redemption of shares and the payment of \$7,625,000. to then existing shareholders;

C. Order defendant Rector to restore to the Creamery for the benefit of creditors the \$7,625,000. distributed to shareholders in violation of his fiduciary duty to the creditors of the corporation;

D. Award the Trustee his costs for the prosecution of this action; and

E. Award any and all further relief the Court deems just and proper.

COUNT VII/CLAIMS AGAINST DEFENDANT SHAREHOLDERS

Plaintiff repeats, realleges and incorporates herein the allegations set forth in paragraphs 1 through 39 and 67 through 77 above.

78. At the time of the LBO defendant Rector held 78% of the shares of the Creamery either individually or as beneficiary of The Mason Rector Family Trust.

79. Peter Rector and Elizabeth Myers were the Co-Trustees of The Mason Rector Family Trust.

80. As part of the LBO and the stock redemption, the Creamery transferred to defendant Rector individually and through The Mason Rector Family Trust approximately \$5,960,000.

81. The Creamery received no benefit from the redemption of shares nor did it receive reasonably equivalent value for the transfer of funds to Rector and Rector and Myers as Trustees of The Mason Rector Family Trust.

82. At the time of the LBO and the redemption of shares the remaining assets of the debtor were unreasonably small in relation to its ongoing business activity.

83. At the time of the LBO and the redemption of shares the debtor intended to incur, believed, or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

84. The above described transfers for the redemption of shares are fraudulent transfers as defined in R.I.G.L. §6-16-4 (a) (2) and may be avoided by the Trustee pursuant to 11 U. S. C. §544 and §550.

WHEREFORE, for the above reasons, the Trustee asks that the Court grant the following relief:

A. Declare, null, void and of no effect and rescind the redemption of shares and the payments made for the redemption of shares to Peter Rector and Peter Rector and Elizabeth Myers as Trustees of The Mason Rector Family Trust;

B. Declare, null, void and of no effect any obligation incurred by the Creamery to the shareholders pursuant to the authorization of the redemption of shares by the Board of Directors of the Creamery in March of 1999;

C. Order the defendants Rector and Rector and Myers as Trustees to return to the debtor all payments made by the Creamery to Rector and Rector and Myers as Trustees as part of the redemption of shares;

D. Award the Trustee his costs for the prosecution of this action; and

E. Any and all further relief the Court deems just and proper.

COUNT VIII/CLAIMS AGAINST DEFENDANT SHAREHOLDERS

The Plaintiff repeats, realleges and incorporates herein the allegations set forth in paragraphs 1 through 39 and 67 through 84 above.

85. The Creamery's redemption of its shares as part of the LBO was prohibited by the Rhode Island Business Corporation Act, R.I.G.L. §7-1.1-5 and R.I.G.L. §7 1.1-60 and is a void transaction.

WHEREFORE, for the above reasons, the Trustee asks that the Court grant the following relief against the defendant shareholders:

A. Declare null and void and rescind the redemption of shares and the payment of funds to defendant Rector and Rector and Myers as Trustees;

B. Order the defendant Rector and the defendants Rector and Myers as Trustees of The Mason Rector Family Trust to repay to the Trustee all sums received for the redemption of shares as part of the LBO in March of 1999;

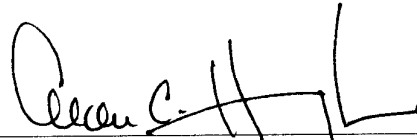
C. Award the Trustee his costs for the prosecution of this action; and

D. Enter any and all further relief the Court deems just and proper.

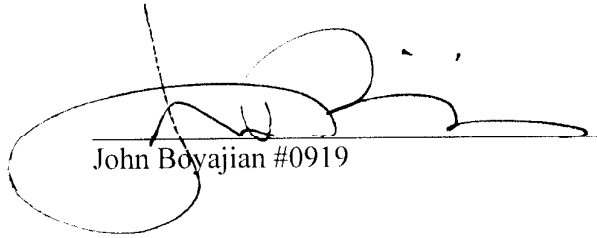
THE NEWPORT CREAMERY, INC.
Debtor

BK-01-13196
CHAPTER 7

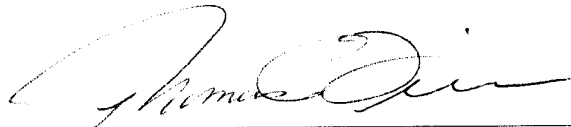
**ANDREW S. RICHARDSON, TRUSTEE
OF THE NEWPORT CREAMERY, INC.**
By his Attorneys,



Alden C. Harrington #1028



John Boyajian #0919



Thomas P. Quinn #4780

Boyajian, Harrington & Richardson
182 Waterman Street
Providence, RI 02906
Tel: (401) 273-9600
Fax: (401) 273-9605
April 10, 2002